Supreme Court, U.S.
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NO. 93-7162

IN THE

Supreme Court of the United States

OCTOBER TERM 1994

JIM EDMOND

PETITIONER,

V.

NEWMAN WHITNEY, A DIVISION OF NEWMAN MACHINE COMPANY, INC. AND MEMPHIS MACHINERY AND SUPPLY CO., INC.

RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

I. WHETHER THE COURT OF APPEALS PROPERLY APPLIED MISSISSIPPI LAW IN DETERMINING THAT THE PETITIONER, JIM EDMOND, FAILED TO PROVE THAT HIS INJURY WAS CAUSED BY A DEFECT IN THE DESIGN OR MANUFACTURE OF THE MACHINE WHICH IS THE SUBJECT OF THIS ACTION?

LIST OF PARTIES

In addition to petitioner Jim Edmond, the only other parties to the appeal before the United States Court of Appeals for the Fifth Circuit, whose judgment is sought to be reviewed, were Newman Whitney, a division of Newman Machine Company, Inc. and Memphis Machinery and Supply Co., Inc. as appellees.

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Petitioner Jim Edmond respectfully requests that a Writ of Certiorari be issued to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered on August 5, 1994, which affirmed the judgment for the respondents previously entered in the United States District Court for the Northern District of Mississippi.

OPINION BELOW

Judgment was entered in this cause for the respondents on December 8, 1992, by the United States District Court for the Northern District of Mississippi, the Honorable Glen Davidson, United States District Judge, in cause number EC 89-321D-D. Subsequently, this decision was affirmed by the United States Court of Appeals for the Fifth Circuit on August 5, 1994, in cause number 93-7162. The petition for rehearing was entered by the Court of Appeals on September 7, 1994. The order affirming the judgment of the United States District Court for the Northern District of Mississippi is included in the appendix. The orders granting the respondents judgment as a matter of law from the United States District Court for the Northern District of Mississippi are also included in the appendix.

STATEMENT OF JURISDICTION

The petitioner seeks review of the final decision of the United States Court of Appeals for the Fifth Circuit entered in this action on August 5, 1994. A judgment denying the petition for rehearing was entered on September 7, 1994. This Court has jurisdiction to review this decision pursuant to 28 U.S.C. 2101.

STATEMENT OF THE CASE

In 1989, the petitioner, Jim Edmond ("Edmond") filed a product liability action against the Respondents. After a trial in district court, the Court ruled, as a matter of law pursuant to FRCP 50, that the motion should be granted on the ground that the danger was open and obvious, and therefore recovery was barred.

The decisions were appealed to the Court of Appeals for the Fifth Circuit, where the judgment was affirmed on the grounds that Edmond's failure to adduce any competent evidence that his injury was proximately caused by a defect in the design or manufacture of the machine on which his injury was sustained doomed his ability to recover. An order denying Edmond's petition for rehearing was entered by the Court of Appeals on September 7, 1994.

Edmond asserts that the Court of Appeals has decided a question in conflict with the decision of the Mississippi Supreme Court, the Court of last resort in that jurisdiction. This is pertinent because the jurisdiction of the district court was invoked pursuant to 28 U.S.C. 1332, and being a diversity case, the Court was Erie bound to apply state law.

REASONS FOR GRANTING THE WRIT

I.

THE FIFTH CIRCUIT COURT OF APPEALS HAS INTERPRETED THE LAW OF STRICT LIABILITY IN A MANNER THAT CONTRAVENES IT'S OWN TEACHINGS IN SATCHER AND THAT CONFLICTS WITH ITS OWN APPROACH IN CONSTRUING THE DECISION IN SATCHER

The Court of Appeals ruled that Edmond has failed to meet his burden of proving that his injury was proximately caused by a defect in the machine. The burden on Edmond, in a strict liability context, is to prove that the machine was unreasonably dangerous and that the defective condition made it unreasonably dangerous to him. **Satcher v. Honda Motor Co.,** 758 F. Supp. 393, 396 (S.D. Miss. 1991), **reversed and rendered,** 984 F. 2d 135 (5th Cir. 1991), **opinion vacated and case remanded,** 993 F. 2d 56 (5th Cir. 1993). Edmond met this burden.

Edmond did present sufficient evidence to present a jury issue as to the defective condition of the machine. The testimony of Dr. Bouchillion outlined defects in the machine from which a reasonable person could find negligence. Dr. Bouchillion testified that there were seven (7) design criticisms or defects in the machine. These defects were:

1. the doors covering the gears should be self closing to prevent human error (SR. 1,p.107);
2. in the alternative, an interlocking switch should have been included in the design to stop the gears when the doors were open (SR. 2, p. 129);
3. alternatively, there should be a color coding scheme to warn of danger (SR. 2, p.129);
4. the hinge that holds that door is sprung (SR. 2, p.129);
5. the door must be opened to apply oil (SR.2, 130);
6. the doors must be opened to grease the machine (SR. 2, p.131);
7. there were no warning signs to inform a user of danger (SR.2, p.131).

II

THE FIFTH CIRCUIT COURT OF APEALS' DECISION IS IN DIRECT CONFLICT WITH THE DECISIONS OF THE MISSISSIPPI SUPREME COURT AND WITH MISSISSIPPI LAW

The trial court improperly applied Mississippi law when it held that the open and obvious defense is a complete and absolute bar in a products liability case. (SR. 6, p.806-07). In reaching this conclusion, the trial court relied upon **Batts v. Tow-Motor Forklift Co.,** 978 F. 2d 1386 (5th Cir. 1992) and **Toney v. Kawasaki Heavy Industries,** 975 F. 2d 162 (5th Cir. 1992).

The Court of Appeals for the Fifth Circuit has recognized that Mississippi applies a risk utility analysis in product liability cases and has done so since 1987. **Satcher v. Honda Motor Co.,** 993 F. 2d. 56, 57 (5th Cir. 1993), **citing, Sperry-New Holland v. Prestage,** 617 So. 2d 248 (Miss. 1993). That Court acknowledged that it had been applying an erroneous interpretation of Mississippi law in product liability cases, and that cases of this nature should be remanded to the trial court to apply the newly developed law to the case. **Satcher,** at 993 F. 2d 57-58.

However, on appeal to the Court of Appeals, rather than addressing this issue, it held that Edmond had failed to testify as to how the accident happened, thus precluding recovery. This is simply not the law in Mississippi.

This case was tried on, inter alia, a strict liability theory. In Mississippi, liability is imposed if the product left the hands of the seller in a defective condition unreasonably dangerous to the user or consumer and such defect causes harm to the consumer provided the product reaches the user without substantial change in the condition in which it is sold. **Edwards v. Sears, Roebuck and Co.,** 512 F. 2d 276, 288 (5th Cir. 1975); **State Stove Mfg. Co. v. Hodges,** 189 So. 2d 113 (Miss. 1966), **cert. denied**, 386 U S 912 (1967).

The decision of the Court of Appeals is in direct conflict with decisions of the Mississippi Supreme Court, mandating the intervention of this Court, because this decision, in contravention of **Erie**, is an unacceptable departure from the usual course of judicial proceedings.

CONCLUSION

The Court of Appeals and the District Court have shown an inability to properly interpret and apply Mississippi Law in a case upon which jurisdiction is founded in diversity of citizenship. This error is a dramatic departure from accepted procedure, and is a direct affront to Erie. This Court should grant the petition for writ of certiorari.

Dated: 12-6-94

Respectfully submitted,

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